

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN G. PEDICINI,

Plaintiff

-vs-

UNITED STATES OF AMERICA
UNITED STATES
DEPARTMENT OF AGRICULTURE,
ANN M. VENEMAN, SECRETARY,
Defendants

CIVIL ACTION NO. 04-12395-JLT

Memorandum In Support of Motion
To Amend Complaint Under
F.R.C.P. 15 (a) and L.R. 15.1

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff JOHN G. PEDICINI, through his counsel, comes before this court pursuant to Federal Rules of Civil Procedure 15 (a) and Local Rule 15.1 for an order allowing the filing of his First Amended Complaint in this matter, adding an addition party to and clarifying claims in his original complaint filed November 12, 2004, based upon the reasons set forth below.

Statement of Fact and Procedural History

____On November 12, 2004, John G. Pedicini through his counsel filed a Complaint against the United States of America and the U.S. Department of Agriculture via its Secretary in her official capacity for violations of Title VII, the Administrative Procedure Act ("APA"), the 5th Amendment and Breach of Contract. The Defendants filed their answer dated January 19, 2005. No

further pleadings have been filed in this case. On March 21, 2005 Plaintiff received the initial disclosures from Defendants and on March 24, 2005 Defendants made a Partial Motion For Judgment on The Pleadings. Plaintiff Pedicini, through his counsel, now seeks to amend his complaint to add a necessary Defendant and to clarify the claims that are the subject of Defendants' Partial Motion for Judgment on The Pleadings.

Argument

Plaintiff's Motion to Amend Should Be Granted Because It Meets The Requirements of Rule 15(a)

Federal Rules of Civil Procedure 15(a) gives leave to amend a complaint after the defense has entered their answer and "leave shall be freely given when justice so requires." Justice requires the amendment of Plaintiff's complaint to include the U.S. Office of Personnel Management ("OPM") because, as Defendants have pointed out in their Partial Motion for Judgment on The Pleadings, Plaintiff's relief under the Part A of his Administrative Procedure Act claim cannot be complete without OPM's action. "A district court's decision to deny leave to amend, pursuant to rule 15(a), will not be found to be an abuse of discretion where 'there appears to be adequate reason for the denial of leave to amend (e.g. undue delay, bad faith, dilatory motive, futility of amendment, prejudice.)'" In re Stone & Webster, Inc, Sec. Litig., 217 F.R.D. 96, 98 (D. Mass. 2003).

Since discovery has not yet begun and no scheduling conference has been held, there would be no prejudice in adding OPM as a defendant. Nor has Plaintiff delayed in adding OPM as a Defendant since Defendants very recently brought the need for adding OPM as a Defendant through their March 24, 2005 Motion. Defendants have pointed out in that Motion that OPM would have to take action to ensure the guidelines under the No Fear Act are enacted. As such, OPM is a necessary party to these proceedings.

Defendants would suffer no prejudice in Plaintiff filing an amended complaint, since Plaintiff seeks to amend without bad motive, to ensure all parties necessary to this action are included, and to clarify his Fifth Amendment and Breach of Contract claims for the Defense's better understanding. Defendants have only recently brought to Plaintiff's attention the need for clarification of his Fifth Amendment and Breach of Contract claims, since their March 24, 2005 Motion seems not to adequately comprehend those claims or the relief sought. So, this action to amend the Complaint is not unduly delayed nor done with bad motive, but rather to clarify the issues at hand and ensure that all agencies whose action are necessary for relief are parties to this civil case.

Conclusion

Accordingly, Plaintiff asks the Court to grant his Motion to File his First Amended Complaint and order him to file the

Amended Complaint accompanying this Motion and supporting Memorandum.

Dated: April 5, 2005

Respectfully Submitted,

/s/ Robert S. Catapano-Friedman

Robert S. Catapano-Friedman
The Catapano-Friedman Law Firm
50 Franklin Street, 4th Floor
Boston, MA 02110
(617) 542-7711
Counsel for Plaintiff
BBO # 078980